REMARKS

This response is intended as a full and complete response to the Statement of the Substance of the Interview concerning an interview, held on June 19, 2007 between Examiner Dominic D. Saltarelli from the USPTO and Chin (Jimmy) Kim, representative of the Applicant and the Office Action mailed July 6, 2007. In the Office Action, the Examiner notes that claims 1-19 and 23-53 are pending and rejected.

In view of the following discussion, Applicants submit that none of the claims now pending in the application are obvious under the provisions of 35 U.S.C. §103. Thus, Applicants believe that all of these claims are now in allowable form.

INTERVIEW SUMMARY

Applicant's representative wishes to thank the Examiner for the courtesies extended during the interview and for taking time out of the Examiner's busy schedule to speak with Applicant's representative.

The Applicant acknowledges the Examiner's Summary of the Substance of the Interview mailed on July 6, 2007. The Applicant and Examiner Saltarelli discussed whether the finality of the rejection mailed on April 20, 2007 was proper. The Examiner indicated that a new non-final office action would be mailed to restart the period of response. The Applicant thanks the Examiner for mailing the new non-final office action.

Objections

Claim 23 is objected to because "the status identifier is improper." The status identifier has been changed to "previously presented" and the previously presented claim incorporates the May 18, 2006 amendment of claim 23 to be dependent upon claim 1 rather than upon canceled claim 22.

Rejection under 35 U.S.C. §103 of Claims 1-5 and 30-32

The Examiner has rejected claims 1-5 and 30-32 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent 5,600,573 to Hendricks et al. (Hendricks) in view

of U.S. Patent 5,956,716 to Kenner (Kenner) and U.S. Patent No. 5,855,020 to Kirsch (Kirsch). Applicants respectfully traverse the Examiner's rejection.

The test under 35 U.S.C. §103 is not whether an improvement or a use set forth in a patent would have been obvious or non-obvious; rather the test is whether the claimed invention, considered as a whole, would have been obvious. Hendricks Kenner and Kirsch, alone or in combination, fail to teach or suggest Applicants' invention as a whole.

Applicants' independent claim 1 recites:

> 1. A system for finding and retrieving programming from remote sources in a distributed digital communication network, comprising:
> an aggregator, comprising:
> a request and results processing server,
> a search engine server coupled to the request and results processing server, wherein the search engine server, comprises:
> a search engine processor;
> a remote content crawler coupled to the search engine processor, wherein the remote content crawler periodically crawls the communications network automatically and retrieves programming information for programs not indexed on the aggregator;
> a search results processor coupled to the search engine processor; and
> a replicated content database; and
> a content acquisition server coupled to the request and results processing server, wherein the request and results processing server receives a request for a program, the search engine server searches the remote sources for the program, and the content acquisition server receives the program from one of the remote sources.

Hendricks discloses an operations center including a system controller, a holder, a computer assisted packaging system that receives video on demand requests and determines whether the program is available for distribution and whether a link is available, and a receiver connected to the holder for receiving signals from a satellite or another remote source.

Kenner discloses using a primary index manager (PIM) to process user requests for video clips stored locally or remotely via a local search and retrieval unit (SRU). Nowhere in Hendricks and Kenner is there any teaching or suggestion of Applicants' claimed aggregator, comprising at least a search engine server comprising a remote content crawler coupled to a search engine processor, wherein the remote content

crawler periodically crawls a communications network automatically and retrieves programming information for programs not indexed on the aggregator. The Examiner concedes this in the Final Office Action. (See Final Office Action, p. 7, ll. 7-11.) However, the Examiner then asserts that Kirsch bridges the substantial gap left by Hendricks and Kenner.

The Applicants respectfully submit that Kirsch fails to bridge the substantial gap left by Hendricks and Kenner because Kirsch also fails to teach or suggest the Applicants' claimed aggregator, comprising at least a search engine server comprising a remote content crawler coupled to a search engine processor, wherein the remote content crawler periodically crawls a communications network automatically and retrieves programming information for programs not indexed on the aggregator. Kirsch discloses that a discrimination engine is used to obtain URLs from a full feed Network news stream. (See Kirsch, col. 5, ll. 31-61.) Subsequently, if the URL parsed from the Network news stream is unavailable, the search engine issues a request via the Internet to determine whether an Information server provides a valid response. (See *Id.* at col. 6, ll. 2-5; col. 7, ll. 8-10.) Only when a URL is found on the database is a web crawler used to revalidate the existing URL, whether aged or new. (See *Id.* at col. 7, ll. 19-65.)

In stark contrast, the Applicants invention teaches an aggregator, comprising at least a search engine server comprising a remote content crawler coupled to a search engine processor, wherein the remote content crawler periodically crawls a communications network automatically and retrieves programming information for programs **not indexed** on the aggregator. In other words, the remote content crawler in the Applicants' invention periodically crawls a communications network automatically to retrieve programming information for programs not indexed on the aggregator. Unlike the Applicants' invention, Kirsch clearly teaches that the crawler only retrieves URL information that is found (i.e that is indexed) in the database.

In fact, Kirsch teaches away from the Applicants' invention because Kirsch specifically teaches that when a URL is not found on the database, the web crawler is not used. Rather, Kirsch teaches that the search engine issues a request via the

Internet to determine whether an information server provides a valid response. (See Kirsch, col. 6, ll. 2-5; col. 7, ll. 8-10.)

Thus, Hendricks, Kenner and Kirsch, alone or in combination, fail to disclose the invention as a whole. As such, Applicants submit that independent claim 1 is not obvious and fully satisfies the requirements of 35 U.S.C. §103 and is patentable thereunder. Furthermore, claims 2-5 and 30-32 depend directly or indirectly from independent claim 1 and recite additional limitations thereof. As such, and for at least the same reasons as discussed above, Applicants submit that these dependent claims are also not obvious and fully satisfy the requirements of 35 U.S.C. §103 and are patentable thereunder. Therefore, Applicants respectfully request that this rejection under 35 U.S.C. §103(a) be withdrawn.

Rejection under 35 U.S.C. §103 of Claims 6-10, 14-19, and 23-29

The Examiner has rejected claims 6-10, 14-19, and 23-29 under 35 U.S.C. §103(a) as being unpatentable over Hendricks, Kenner, and Kirsch as applied to claim 1 above, and further in view of Cappi. Applicants respectfully traverse the Examiner's rejection and particularly the Examiner's characterization of Cappi.

Claims 6-10, 14-19, and 23-29 depend, directly or indirectly, from independent claim 1 and recite additional limitations thereof. Moreover, for at least the reasons discussed above, the Hendricks, Kenner and Kirsch references fail to teach or suggest Applicants' invention as a whole, as recited in claim 1. Accordingly, any attempted combination of the Hendricks, Kenner and Kirsch references with the Cappi reference, in a rejection against the dependent claims, would still result in a gap in the combined teachings in regards to the independent claim. As such, Applicants submit that dependent claims 6-10, 14-29, and 23-29 are also not obvious and are patentable under 35 U.S.C. §103.

Therefore, Applicants respectfully request that this rejection under 35 U.S.C. §103(a) be withdrawn.

Rejection under 35 U.S.C. §103 of Claims 11-13

The Examiner has rejected claims 11-13 under 35 U.S.C. §103(a) as being unpatentable over Hendricks, Kenner, Kirsch and Cappi as applied to claim 10 above, and further in view of Whitman et al. U.S. Patent 6,772,150 (Whitman) and Grooters U.S. Patent 6,839,705 (Grooters). Applicants respectfully traverse the rejection.

Claims 11-13 depend directly or indirectly from independent claim 1 and recite additional limitations thereof. Moreover, for at least the reasons discussed above, the Hendricks, Kenner, Kirsch and Cappi references fail to teach or suggest Applicants' invention as a whole, as recited in claim 1. Whitman and Grooters also do not teach or suggest at least "a remote content crawler coupled to the search engine processor, wherein the remote content crawler periodically crawls the communications network automatically and retrieves programming information for programs not indexed on the aggregator." Accordingly, any attempted combination of the Hendricks, Kenner, Kirsch and Cappi references with the Whitman and Grooters references, in a rejection against the dependent claims, would still result in a gap in the combined teachings in regards to the independent claim because they all lack the feature of periodically crawling the communications network automatically and retrieving programming information for programs not indexed on the aggregator. As such, Applicants submit that dependent claims 11-13 are also not obvious and are patentable under 35 U.S.C. §103.

Therefore, Applicants respectfully request that this rejection under 35 U.S.C. §103(a) be withdrawn.

Rejection under 35 U.S.C. §103 of Claims 33, 39-44, 46, 47, 50, 51, and 53

The Examiner has rejected claims 33, 39-44, 46, 47, 50, 51, and 53 under 35 U.S.C. §103(a) as being unpatentable over Kenner in view of Kirsch. Applicants respectfully traverse the rejection.

Applicants' independent claims 33 and 50 recite:

> 33. A method using a video and multimedia aggregator for finding and retrieving program content from remote sources in a distributed digital communication network, comprising:
>
> receiving a program content search request from a user terminal in the network;
>
> searching a local content database based on the program content search request;

searching one or more remote content databases based on the program content search request;

identifying one or more programs based on the searches; and

acquiring one or more of the one or more identified programs from one or more of the local content database and the remote databases;

periodically crawling the communications network automatically; and

retrieving programming information for programs not indexed on the aggregator.

50. A video and multimedia aggregator for use in a distributed digital communication network, comprising:

means for requesting a search for program content;

means for processing the search request;

means for searching local and remote sources for the program content;

means for acquiring metadata related to the program content;

means for displaying the acquired metadata;

means for receiving a program content download request;

means for acquiring the program content in the download request;

means for displaying the acquired program content at a user terminal;

means for billing a user of the user terminal; and

means for periodically crawling the communications network automatically, thereby retrieving programming information for programs not indexed on the aggregator.

The Kenner and Kirsch references alone or in combination fail to teach or suggest Applicants' invention as a whole.

In particular, the Kenner reference discloses a video clip storage and retrieval system whereby video clips, stored locally and/or at a more remote location, can be requested and retrieved by a user at the user's multimedia terminal.

Nowhere in the Kenner reference is there teaching or suggestion of, "periodically crawling the communications network automatically; and retrieving programming information for programs not indexed on the aggregator" as explicitly claimed in claim 33. Moreover, the Kenner reference does not teach or suggest, "means for periodically crawling the communications network automatically, thereby retrieving programming information for programs not indexed on the aggregator" as explicitly claimed in claim 50.

Kirsch does not teach or suggest what is missing from Kenner as described above. In particular, nowhere in Kirsch is there any teaching or suggestion of the feature of "periodically crawling the communications network automatically; and retrieving programming information for programs not indexed on the aggregator", as explicitly claimed in claim 33 or "means for periodically crawling the communications network automatically, thereby retrieving programming information for programs not indexed on the aggregator" as explicitly claimed in claim 50.

As discussed above, the Applicants respectfully submit that Kirsch fails to bridge the substantial gap left by Kenner because Kirsch also fails to teach or suggest periodically crawling the communications network automatically; and retrieving programming information for programs not indexed on the aggregator. Kirsch discloses that a discrimination engine is used to obtain URLs from a full feed Network news stream. (See Kirsch, col. 5, ll. 31-61.) Subsequently, if the URL parsed from the Network news stream is unavailable, the search engine issues a request via the Internet to determine whether an information server provides a valid response. (See *Id.* at col. 6, ll. 2-5; col. 7, ll. 8-10.) Only when a URL is found on the database is a web crawler used to revalidate the existing URL, whether aged or new. (See *Id.* at col. 7, ll. 19-65.)

In stark contrast, the Applicants invention teaches periodically crawling the communications network automatically; and retrieving programming information for programs **not indexed on the aggregator**. Unlike the Applicants' invention, Kirsch clearly teaches that the crawler only retrieves URL information that is found (i.e that is indexed) in the database.

In fact, Kirsch teaches away from the Applicants' invention because Kirsch specifically teaches that when a URL is not found on the database, the web crawler is not used. Rather, Kirsch teaches that the search engine issues a request via the Internet to determine whether an information server provides a valid response. (See Kirsch, col. 6, ll. 2-5; col. 7, ll. 8-10.)

As such, Applicants submit that independent claims 33 and 50 satisfy the requirements of 35 U.S.C. §103 and are patentable Kenner in view of Kirsch. Furthermore, claims 39-44, 46, 47, 51, and 53 depend directly or indirectly from

independent claims 33 and 50 and recite additional limitations thereof. Accordingly, for at least the same reasons as discussed above, Applicants submit that these dependent claim fully satisfy the requirements of 35 U.S.C. §103 and are patentable over Kenner in view of Kirsch. Therefore, the rejection should be withdrawn.

Rejection under 35 U.S.C. §103 of Claims 34-36

The Examiner has rejected claims 34-36 under 35 U.S.C. §103(a) as being unpatentable over Kenner and Kirsch as applied to claim 33 above, and further in view of Whitman. Applicants respectfully traverse the rejection.

Claims 34-36 depend directly or indirectly from independent claim 33 and recite additional limitations thereof. Moreover, for at least the reasons discussed above, the Kenner and Kirsch references fail to teach or suggest Applicants' invention as a whole, as recited in claim 33. Whitman also does not teach or suggest at least "a remote content crawler coupled to the search engine processor, wherein the remote content crawler periodically crawls the communications network automatically and retrieves programming information for programs not indexed on the aggregator." Accordingly, any attempted combination of the Kenner and Kirsch references with the Whitman reference, in a rejection against the dependent claims, would still result in a gap in the combined teachings in regards to the independent claim because Whitman lacks the feature of periodically crawling the communications network automatically and retrieving programming information for programs not indexed on the aggregator. As such, Applicants submit that dependent claims 34-36 are also not obvious and are patentable under 35 U.S.C. §103.

Therefore, Applicants respectfully request that this rejection under 35 U.S.C. §103(a) be withdrawn.

Rejection under 35 U.S.C. §103 of Claims 37 and 38

The Examiner has rejected claims 37 and 38 under 35 U.S.C. §103(a) as being unpatentable over Kenner, Kirsch and Whitman as applied to claim 35 above, and further in view of Nelson et al. U.S. Patent 6,243,713 (Nelson). Applicants respectfully traverse the rejection.

Claims 37 and 38 depend indirectly from independent claim 33 and recite additional limitations thereof. For at least the reasons discussed above, the Kenner and Kirsch references fail to teach or suggest Applicants' invention as a whole, as recited in claim 33. Furthermore, the Kenner, Kirsch and Whitman references fail to teach or suggest Applicants' invention as recited in dependent claim 35. Nelson does not teach or suggest the gap between Kenner, Kirsch and Whitman as stated above. Accordingly, any attempted combination of the Kenner, Kirsch and Whitman references with Nelson, in a rejection against the dependent claims, would still result in a gap in the combined teachings in regards to the independent claim. As such, Applicants submit that dependent claims 37 and 38 are also not obvious and are patentable under 35 U.S.C. §103.

Therefore, Applicants respectfully request that this rejection under 35 U.S.C. §103(a) be withdrawn.

Rejection under 35 U.S.C. §103 of Claim 45 and 48

The Examiner has rejected claim 45 and 48 under 35 U.S.C. §103(a) as being unpatentable over Kenner and Kirsch as applied to claims 44 and 46 above, and further in view Grooters. Applicants respectfully traverse the rejection.

Claims 45 and 48 depend, directly or indirectly, from independent claim 33 and recite additional limitations thereof. Moreover, for at least the reasons discussed above, the Kenner and Kirsch references fail to teach or suggest Applicants' invention as a whole, as recited in claim 33. Grooters also does not teach or suggest the limitations such as periodically crawling the communications network automatically and retrieving programming information for programs not indexed on the aggregator.

Accordingly, any attempted combination of the Kenner and Kirsch references with Grooters, in a rejection against the dependent claims, would still result in a gap in the combined teachings in regards to the independent claim. As such, Applicants submit that dependent claims 45 and 48 are also not obvious and are patentable under 35 U.S.C. §103.

Therefore, Applicants respectfully request that this rejection under 35 U.S.C. §103(a) be withdrawn.

Rejection under 35 U.S.C. §103 of Claims 49 and 52

The Examiner has rejected claims 49 and 52 under 35 U.S.C. §103(a) as being unpatentable over Kenner and Kirsch as applied to claim 46 above, and further in view of Nelson. Applicants respectfully traverse the rejection.

As stated above, Kenner and Kirsch do not teach or suggest periodically crawling the communications network automatically and retrieving programming information for programs not indexed on the aggregator.

Nelson discloses multimedia document retrieval by retrieving multimedia queries of different data types. Nelson also does not teach or suggest periodically crawling the communications network automatically and retrieving programming information for programs not indexed on the aggregator. As such, Applicants submit that dependent claims 49 and 52 are also not obvious and are patentable under 35 U.S.C. §103.

Therefore, Applicants respectfully request that the rejection of such claims under 35 U.S.C. §103(a) be withdrawn.

Regarding Official Notice:

The Applicants reiterate the fact that Official Notice was not properly established. Under MPEP 2144.03, the board cannot rely on conclusory statements when dealing with particular combinations of prior art and specific claims, but must set forth the rationale on which it relies. In re Lee, 277 F.3d 1338, 1344-45, 61 USPQ2d 1430, 1434-35 (Fed. Cir. 2002). Moreover, there must be some form of evidence in the record to support an assertion of common knowledge. See *Id.* The Examiner's self proclaimed "notoriousness" of various technologies is clearly "conclusory" without supporting evidence and, therefore fails to properly establish Official Notice.

Even if properly established, the Applicants believe that each Official Notice was adequately traversed, as required under MPEP 2144.03. The Applicants' argument states "it may not be well known to combine the allegedly well known apparatuses and/or methods with other apparatuses and/or methods recited in the respective claims or in other claims from which the respective claims may depend." This may apply equally to each instance of Official Notice taken to the Examiner.

Moreover, the above argument states "why the noticed fact is not considered to be common knowledge or well-known in the art" as the Examiner asserts is required. (See Office Action, p. 4, ll. 3-4, emphasis in original.) The specific reason "why" is because it may not be well known to combine the allegedly well known apparatuses and/or methods with other apparatuses and/or methods recited in the respective claims or in other claims from which the respective claims may depend. Similar to *Lee* where the court held that the board cannot rely on conclusory statements when dealing with particular combinations of prior art and specific claims, here, the Examiner may not rely on conclusory statements when dealing with the combination of allegedly well known apparatuses and/or methods.

Consequently, the Examiner failed to establish a proper Official Notice. Even if it is found that proper Official Notice was established, the Applicants adequately traversed such a finding by specifically pointing out the supposed errors in the Examiner's action in this response and all previous responses submitted, as required under MPEP 2144.03. As a result, the Applicants respectfully submit that the Examiner is required by the MPEP sections cited above to support his or her finding with adequate evidence, as requested by the Applicants. Alternatively, the Examiner is required by 37 CFR 1.104(d)(2), to support the finding of what is known in the art by providing an affidavit or declaration setting forth specific factual statements and explanation to support the finding.

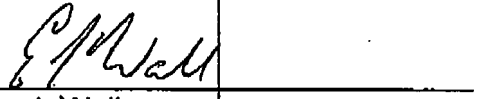
CONCLUSION

Thus, Applicants submit that all of the claims presently in the application are allowable. Accordingly, both reconsideration of this application and its swift passage to issue are earnestly solicited.

If, however, the Examiner believes that there are any unresolved issues requiring adverse final action in any of the claims now pending in the application, it is requested that the Examiner telephone Eamon J. Wall or Jimmy Kim at (732) 530-9404 so that appropriate arrangements can be made for resolving such issues as expeditiously as possible.

Respectfully submitted,

Dated: 7/31/07



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